

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON COLEMAN and JESSICA CASEY,
on behalf of the RVNB Holdings, Inc.
Employee Stock Ownership Plan, and on
behalf of a class of all other persons similarly
situated,

Plaintiffs,

v.

NEIL M. BROZEN, ROBERT PETERSON,
JR., VASILIA PETERSON, MIKE PAXTON,
NICK BOURAS, STERLING INVESTMENT
PARTNERS III, L.P., NICOLE PETERSON
2012 IRREVOCABLE TRUST, and BROOKE
PETERSON 2012 IRREVOCABLE TRUST,

Defendants.

Case No. 3:20-cv-01358-E

**PLAINTIFFS' NINTH NOTICE OF SUPPLEMENTAL AUTHORITY
IN FURTHER SUPPORT OF THEIR OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL INDIVIDUAL ARBITRATION**

Plaintiffs Jason Coleman and Jessica Casey ("Plaintiffs"), on behalf of the RVNB Holdings, Inc. Employee Stock Ownership Plan (the "Plan"), file this ninth notice of supplemental authority related to *Defendants' Motion to Compel Individual Arbitration* (ECF No. 66). Plaintiffs briefed their opposition to the pending motion to compel arbitration on July 13, 2020 (ECF No. 70), and later filed seven notices of supplemental authority. (ECF Nos. 74, 78, 83, 89, 93, 97, 112). On February 13, 2023, Plaintiffs filed a *Motion for Leave to File Plaintiffs' Eighth Notice of Supplemental Authority* (ECF No. 120), which is pending.

On January 25, 2023, the federal magistrate judge entered a report and recommendation in *Burnett v. Prudent Fiduciary Servs. LLC*, No. 22-270, 2023 WL 387586 (D. Del. Jan. 25, 2023). *See* Exhibit 1. That ESOP case involved ERISA claims and an arbitration clause

materially identical to the arbitration clause at issue in this case. The magistrate recommended that the defendants' motion to compel individual arbitration be denied because "the elimination of [the plaintiffs'] right to seek plan-wide monetary relief is an impermissible prospective waiver of their right to the statutory remedy provided by [29 U.S.C.] §§ 1109(a) and 1132(a)(2)." *Id.* at *6. In so holding, the magistrate relied on the district court opinions in *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 593 F. Supp. 3d 1078 (D. Colo. 2022), *aff'd*, 59 F.4th 1090 (10th Cir. 2023), and *Cedeno v. Argent Tr. Co.*, No. 20-9987, 2021 WL 5087898 (S.D.N.Y. Nov. 2, 2021).¹ 2023 WL 387586, at *6-8. *Burnett* rejects the misreading of *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248 (2008), as stated in *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510 (9th Cir. 2019), and which Defendants advance here, for the same reasons Plaintiffs have argued and the Tenth Circuit in *Harrison* and district court in *Cedeno* held. 2023 WL 387586, at *7 & n.7.

On March 8, 2023, the federal district judge in the *Burnett* case adopted the magistrate judge's report and recommendation in full. *See* Exhibit 2, *Burnett v. Prudent Fiduciary Servs. LLC*, No. 22-270, 2023 WL 2401707 (D. Del. March 8, 2023). In doing so, the district judge noted that the recommendation was prescient. "Within a few weeks of its issuance, the Tenth Circuit . . . thoroughly analyzed the same issues and came to the same conclusion [that] the Magistrate Judge did." 2023 WL 2401707, at *1 (citing *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 59 F.4th 1090 (10th Cir. 2023)).² And because the district judge found *Harrison* persuasive, he denied the motion to compel arbitration.

¹ The district court's opinion in *Cedeno* is the subject of *Plaintiffs' Sixth Notice of Supplemental Authority* (ECF No. 97). The U.S. Department of Labor's amicus brief on the Second Circuit appeal in *Cedeno* is the subject of *Plaintiffs' Seventh Notice of Supplemental Authority* (ECF No. 112).

² The Tenth Circuit's opinion in *Harrison* is the subject of *Plaintiffs' Eighth Notice of Supplemental Authority* (ECF No. 120-1).

The reasoning in the two *Burnett* decisions applies with equal force here. This Court should accordingly deny *Defendants' Motion to Compel Individual Arbitration*.

Dated: March 31, 2023

Respectfully submitted,

By: /s/ Thomas R. Ajamie

Thomas R. Ajamie

Texas Bar No. 00952400

John S. "Jack" Edwards, Jr.

Texas Bar No. 24040851

AJAMIE LLP

Pennzoil Place - South Tower

711 Louisiana, Suite 2150

Houston, TX 77002

Tel: (713) 860-1600

Fax: (713) 860-1699

tajamie@ajamie.com

jedwards@ajamie.com

J. Douglas Uloth

Texas Bar No. 20273700

Of Counsel

AJAMIE LLP

5080 Spectrum Drive, Suite 1000 East

Addison, TX 75001-4648

Tel: (469) 791-0411

Fax: (888) 780-5946

douguloth@ulothlaw.com

Gregory Y. Porter (*pro hac vice*)

Ryan T. Jenny (*pro hac vice*)

James Kauffman (*pro hac vice*)

Alexandra Langley Serber (*pro hac vice*)

BAILEY & GLASSER LLP

1055 Thomas Jefferson St., NW, Suite 540

Washington, DC 20007

Tel: (202) 463-2101

Fax: (202) 463-2103

gporter@baileyglasser.com

rjenny@baileyglasser.com

jkauffman@baileyglasser.com

aserber@baileyglasser.com

*Attorneys for Plaintiffs Jason Coleman &
Jessica Casey*

CERTIFICATE OF SERVICE

I certify that on March 31, 2023, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Thomas R. Ajamie
Thomas R. Ajamie